U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

In the Matter of: Case No.: A99-378-387

LOPEZ, JUAN CARLOS

IN REMOVAL PROCEEDINGS RESPONDENT

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear.

Respondent has made no application for relief from removal.

It is HEREBY ORDERED that the respondent be removed from the United States to GUATEMALA on the charge(s) contained in the Notice to Appear.

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in INA section 237(a), who willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General shall be fined and/or imprisoned for up to ten years. Further, any alien who willfully fails or refuses to depart from the United States pursuant to a final

removal order or present for removal at the time and place required by the Attorney General shall pay a civil penalty of not more than $500 to the Commissioner for each day the alien is in violation of this section.

GARRY D. MALPHRUS

Immigration Judge Date: Aug 21, 2006

Appeal: (A/I/B)

Appeal Due By: Sep 20, 2006

CERTIFICATE OF SERVICE
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DATE 8/21/2006 BY: COURT STAFF

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Attachments: [EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other
Form EOIR 7 - 4T (REMOVAL Order)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Arlington, Virginia

File No.: A 99 378 387

August 21, 2006

In the Matter of
JUAN CARLOS LOPEZ
IN REMOVAL PROCEEDINGS, Respondent

CHARGE:	Section 212(a)(6)(A)(i) of the INA for being present in the United States without being admitted or paroled;
ADDITIONAL CHARGE:	Section 212(a)(2)(A)(1)(I) of the INA for being an alien convicted of a crime involving moral turpitude or an attempt or conspiracy to commit such crime.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT:
Ivan Yacub
307 E. Annadale Rd. Suite 201
Falls Church, VA 22042

ON BEHALF OF DHS:
Rook Moore
Asst. Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Guatemala, who was issued a Notice to Appear on June 22, 2006.

The respondent, through counsel, admitted the factual allegations in the NTA at an earlier Master Calendar hearing.

The respondent conceded at that hearing that he is removable under 212(a)(6)(A)(1) in that the respondent is present in the United States without being admitted or paroled. The Court finds that removability under this charge has been established by clear and convincing evidence.

The respondent denies that he is removable under Section 212(a)(2)(A)(1)(I) of the INA for having been convicted of a crime involving moral turpitude.

In this case, the respondent was convicted on May 22, 2006 for the offense of assault in violation of Virginia Code Section 18.2-7 and sentenced to 360 days incarceration. For this conviction, the respondent was originally charged with felonious assault, but the respondent was convicted of misdemeanor assault under 18.2-57. In addition, the respondent was convicted on June 21, 2006 for assault and battery in violation of Section 18.2-57, and sentenced to 30 days incarceration.

For this conviction, the respondent was originally charged with assault and battery against a family member. The charge was pled to assault and battery in violation of 18.2-57. The Government

agrees that these appear to be assault violations that did not have as a requirement of assault against a family member. Thus, the Government agrees that Matter of Tran would not apply. Therefore, these convictions are not crimes involving moral turpitude.

The Court agrees with the respondent's argument that these convictions are not CIMTs, because they appear to be pled down such that the actual conviction was not as an element of the crime a conviction against a family member. The Court can only look to the elements of the offense for which the respondent is convicted and simple assault would not rise to the level of a crime involving moral turpitude. As noted in Matter of Saduno, 23 I&N Dec. 968 (BIA 2006), simple assault without an aggravating factor does not involve moral turpitude.

In this case, the respondent was not convicted under 18.257.2 but, instead, was convicted under 18.2-57. In these circumstances, the Court concludes that there is not an aggravated factor of the family member involved in this conviction. Thus, accordingly, the Court concludes that the charge under Section 212 (a) (2) (A) (i) (I) cannot be sustained. Thus, the Court finds that the charge under 212(a)(2)(A)(i)(I) is not a charge for which the respondent is subject to removal.

However, as noted, the respondent is removable under 212(a)(6)(A)(i). Thus, the Court finds that removability has been established by clear and convincing evidence.

The respondent filed an application for legalization, pursuant to Section 245A of the INA. The respondent filed this application with USCIS and this application was denied.

The respondent makes various allegations regarding not receiving letters from USCIS in regards to this application. The Court is not making any factual findings on the respondent's self-serving allegations in this regard. This was a matter that was determined by USCIS.

The respondent seeks to renew his application with the Immigration Court. There is no regulatory authority for the respondent to renew the application with the Immigration Court. The Administrative Appeals Office within DHS has exclusive jurisdiction to review an alien's legalization claim. See 8 C.F.R. Section 245(a)(.2)(b). Therefore, this Court does not have jurisdiction to review the respondent's application for permanent residency.

The respondent argues that this is a Fifth Amendment due process violation. This Court is not authorized to determine a constitutional challenge to the regulations. Thus, it is not necessary for the Court to review in detail these constitutional allegations.

The respondent has no relief available to him, other than an attempt to renew his application for permanent residency, which this Court does not have jurisdiction to adjudicate. Accordingly, the respondent has no relief currently available to him.

The Court, having found the respondent removable under the initial charge, under 212(a)(6)(A)(1), and, finding that the respondent has no application for relief pending, that the Court concludes that the respondent is removable from the United States and will order the respondent removed to Guatemala on the charge contained in the Notice to Appear.

ORDER

IT IS THEREFORE ORDERED that the respondent shall be removed from the United States to Guatemala on the charges contained in the Notice to Appear.

Garry D Malphs

GARRY D. MALPHRUS Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE GARRY D. MALPHRUS, in the matter of:

JUAN CARLOS LOPEZ
A 99 378 387
Arlington, Virginia

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Susan Aiello, Transcriber

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October 22, 2006

(completion date)

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